

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MTGLQ INVESTORS, LP,

Plaintiff,

vs.

1:17-cv-00487-KG-LF

MONICA L. WELLINGTON, THE MONICA L.
WELLINGTON DECLARATION OF TRUST
DATED DECEMBER 28, 2007, ALTURA VILLAGE
HOMEOWNERS' ASSOCIATION, INC., JP MORGAN
CHASE BANK, N.A., AND THE UNKNOWN SPOUSE
OF MONICA L. WELLINGTON,

Defendant,

and

MONICA WELLINGTON,

Counter Claimant,

v.

WEINSTEIN & RILEY, P.S., ELIZABETH V.
FRIEDENSTEIN, RUSHMORE LOAN MANAGEMENT
SERVICES, LLC, JP MORGAN CHASE BANK, N.A.,
PROFOLIO HOME MORTGAGE CORPORATION,
MTGLQ INVESTORS, LP,

Counter Defendants.

ORDER QUASHING ORDER TO SHOW CAUSE

THIS MATTER is before the Court on Plaintiff's Response to the Order to Show Cause, filed on August 28, 2017. Doc. 39. The Order to Show Cause instructed plaintiff either to effect service or to provide the Court a written explanation showing good cause why service had not been made on "The Monica L. Wellington Declaration of Trust Dated December 28, 2017," FNU LNU (the unknown spouse of Monica L. Wellington), the Altura Village Homeowners'

Association Inc., and Profolio Home Mortgage Corporation. Doc. 33. Plaintiff has shown good cause for its failure to timely serve, and the Order to Show Cause will be QUASHED.

Plaintiff filed a separate motion requesting the Court grant permission to serve by publication defendants “The Monica L. Wellington Declaration of Trust Dated December 28, 2017” and the unknown spouse of Monica L. Wellington which described its efforts to serve these defendants. *See* Doc. 36; *see also* Doc. 41 at 2 (disclosing that Ms. Wellington has refused to accept service on behalf of the trust even though plaintiff believes she is the trustee, and disclosing also that Ms. Wellington has not been forthcoming about her marital status). The Court will grant plaintiff a period of limited discovery to ascertain the identity and location of these defendants, by separate order.

Plaintiff filed proof of service for Altura Village Homeowners’ Association, Inc. on August 28, 2017. Doc. 37.

Plaintiff advised the Court that it did not name Profolio Home Mortgage Corporation (Profolio) as a defendant. Doc. 39 at 2. Instead, defendant Monica L. Wellington named Profolio in her counterclaim, filed on May 21, 2017. Doc. 6. The Court has revised the docket to reflect Profolio’s role as a counter-defendant. Plaintiff is not responsible for serving Profolio.

Because the Court finds that plaintiff has adequately explained its failure to serve the defendants noted in its Order to Show Cause, the Order to Show Cause is hereby QUASHED.

Plaintiff has shown good cause for failure to effect service within the time limits of Rule 4(m), and an extension of time to serve is therefore granted. *See Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995) (“a plaintiff who shows good cause for failure to timely effect service is entitled to a mandatory extension of time.”). The Court grants plaintiff an additional

90 days from the date of this order to serve defendants “The Monica L. Wellington Declaration of Trust Dated December 28, 2017” and the unknown spouse of Monica L. Wellington.



Laura Fashing
United States Magistrate Judge

A handwritten signature of "Laura Fashing" is written over a horizontal line. Below the signature, the name "Laura Fashing" is printed in a standard font, followed by "United States Magistrate Judge".